DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Head notes prepared by M. P. Burks, State Reporter.)

BOISSEAU v. FULLER AND OTHERS.—Decided at Wytheville, June 9, 1898.—*Harrison*, J. Absent, *Riely* and *Cardwell*, JJ:

1. LEASE—*Concluded contract—Formal papers to be executed in future.* Words of present demise will generally make an actual lease, if no future or more formal document appears to have been intended. If the parties are fully agreed there is a binding contract, notwithstanding the fact that a formal contract is to be prepared and signed. If, though fully agreed, they do not intend to be bound until a formal contract is prepared and executed, then there is no contract, and the fact that a formal contract is to be executed is strong evidence to show that they do not intend the previous negotiations to amount to an agreement. It is a question of intention. An agreement signed by the parties which designates the property to be leased, the price to be paid, and the duration of the term, but concludes: "The above to be covered by a regular lease subject to approval by all parties," is not a concluded contract, but merely an executory agreement for a lease.

ROBINSON'S ADM'R v. DININNY.—Decided at Wytheville, June 9, 1898.—*Buchanan*, J. Absent, *Riely* and *Cardwell*, JJ:

1. MASTER AND SERVANT—*Safe place to work—Duty of master—Risks assumed by servant—Case at bar.* It is the duty of a master to use ordinary care and diligence to provide a reasonably safe place in which his servant is to work, considering the character of the work to be done, and for failure to do so he is liable for resulting injuries to the servant. The servant, however, assumes all the ordinary risks of the service in which he is engaged. He also, as a general rule, assumes all risks from causes which are known to him, or which should be readily discoverable by a person of his age and capacity in the exercise of ordinary care. In the case at bar the method of doing the work was inhuman, there was a safer and better way to do it, and it was folly in the servant to engage in it, but the danger was open and obvious and there can be no recovery against the master for the injuries to the servant.

CITY OF NORFOLK v. NOTTINGHAM AND OTHERS.—Decided at Wytheville, June 9, 1898.—*Keith*, P:

1. DEDICATION OF LAND FOR STREETS—*Acceptance—Revocation of dedication.* Although there may have been a sufficient dedication of land to a public road or street, acceptance in some form by the public is necessary to establish the right in the public. The dedication, however, whether express or implied, may be revoked before it has been accepted by competent authority, or others have, upon the faith of it, been induced so to act as to render its revocation unjust.

2. SALE OF LOTS BY A MAP.—*Rights of purchasers in streets—Rights of third persons.* The sale of lots according to a map vests in the purchasers the right to

use the streets appearing upon such map, and the right so vested cannot be defeated by the act of the vendor, because by the sale, under such circumstances, he is estopped to deny or impeach rights thus acquired. Such an estoppel, however, operates only in favor of him who has been misled to his injury, and he alone can set it up. It does not operate in favor of a city or county which has acquired no rights thereunder.

SIMS v. TYRER.—Decided at Wytheville, June 9, 1898.—*Buchanan*, J. Absent, *Keith*, P. and *Cardwell*, J:

1. CHANCERY PRACTICE—*Sale of lands—Account of liens.* It is error to decree a sale of lands to satify liens without first ascertaining the amount of the liens.

2. SALE BY WRONG-DOER—*Damages—Measure of recovery against.* A party whose property has been improperly sold by a wrong-doer is entitled to recover the value of the property at the date of such sale.

3. RES JUDICATA—*Second appeal—Case in judgment.* A question raised by a second appeal in a case, which was necessarily involved on the former appeal in the same case, and was expressly raised by a petition to rehear the former decree of the appellate court, must be regarded as *res judicata*. In the case in judgment, even if the questions involved were not concluded by the former appeal, the decision of the lower court is right.

TAYLOR v. MALLORY.—Decided at Wytheville, June 9, 1898.—*Harrison*, J. Absent, *Cardwell*, J:

1. APPEAL AND ERROR—*Exceptions in trial court—Failure to assign as error in petition.* Although an exception is taken to the ruling of the trial court on the admission of certain evidence, yet, if the petition for a writ of error makes no allusion to it, and no ground of objection is pointed out or suggested, and this court can perceive none, the exception will be treated as not well taken.

2. EVIDENCE—*Exception well taken—Proving same facts by other witnesses—Harmless error.* Although an exception to the testimony of a witness may be well taken, if the same fact is subsequently proved by other witnesses without objection, the error will be deemed to be harmless.

3. TRIALS—*Depositions—Appellate court—Papers not made a part of record will not be considered.* The deposition of a witness taken in an action at law may be read at the trial where the trial court is satisfied from evidence produced before it that, on account of sickness, the witness is unable to attend. The correctness of the ruling of the trial court, however, must be determined from the record. This court will not consider certificates or other papers produced in argument, but omitted from the record.

4. EJECTMENT—*Fraudulent deed part of chain of title—Jury to determine whether fraudulent or not.* In an action of ejectment where a deed alleged to be voluntary and fraudulent forms a part of the plaintiff's chain of title it is the province of the jury to determine, under proper instructions from the court, whether the deed was voluntary and fraudulent or not.

5. VOLUNTARY DEED—*Not per se fraudulent—Prima facie fraudulent as to existing creditors—Burden of proof.* A voluntary deed, founded on a good considera-